

## Integrated Marketing Solutions Limited and client xxx Terms & Conditions

1. **Parties and Application.** These terms and conditions ("terms") cover all consulting services, advice, work product and other deliverables (collectively, the "services") provided by the Integrated Marketing Solutions Ltd entity identified below or any of its affiliates ("IMS", "we", "our" or "us") to the entity identified below or any of its affiliates ("you" or "your").

The scope of our services for each project (the "statement of work") will be agreed by you and us in written communications and shall, unless provided otherwise, incorporate these terms.

2. **Fees.** Unless otherwise specified, our fees will be calculated by reference to any statement(s) of work that are agreed between the parties on either a project or retained basis. Any fees or rates quoted or estimated are exclusive of any applicable sales, or similar taxes. Expenses that are agreed in advance between both parties may be charged in addition.

Unless otherwise agreed, we will submit invoices for the services provided and expenses incurred on a monthly basis. Invoices are payable within 30 days of receipt. In the event that invoices are not paid within that time we shall be entitled to charge a late payment fee of the lesser of 1.0% per month or the maximum allowed by law.

3. **Our responsibilities.** We shall provide the services in a professional manner with reasonable skill and care. We will assign to the project team members of our staff with adequate education, training and experience to perform the tasks assigned to them. We will use reasonable endeavours to meet any timetable that we may agree with you.

The work product we deliver to you in connection with the performance of the services will not infringe any intellectual property right of any third party. Unless otherwise expressly agreed in writing, we do not accept any fiduciary or trust responsibilities or related liability in connection with the performance of the services.

4. **Your responsibilities.** You will provide us in a timely manner with the documentation, information, access to your personnel and cooperation we reasonably require to provide the services. Any delay or failure to provide materials, information or cooperation may result in a revision to any agreed timetable and/or, if we need to do additional work as a result, in additional fees being charged. We will rely on the documentation and information provided to us by you or your representatives and do not take responsibility for verifying the accuracy or completeness of it. You may rely only upon our final work product and not on any drafts or oral statements made by us in the course of the services.

5. **Intellectual Property Rights and Work Product.** You shall retain ownership of all original data and materials, and the intellectual property rights in such data and materials, provided to us by you or your representatives. You will own the intellectual property rights and have the right to use, reproduce and adapt the copies of the work product delivered to you without limitation.

Work product in this definition relates to all work undertaken for you relating to database and single customer view development and jointly developed Adobe Campaign work products. Work product will exclude independently developed Adobe Campaign work products from IMS that will remain the IP of IMS, and may not be referenced or distributed to any other party without our prior written consent. You may distribute our work product to your affiliates, provided that you ensure that each such affiliate complies with these terms and the applicable statement of work as if it were a party to them, and you remain responsible for such compliance.

"Background IPRs" means any and all Intellectual Property Rights that are owned by, or licensed to, IMS or its sub-contractors and which are or have been developed independently of this MSA or any applicable SOW (whether prior to the Effective Date or otherwise).

6. **Confidentiality and Data Privacy.** Each party shall protect all confidential information which the other party provides to it (whether orally, in writing or in any other form) using the same standards as the recipient applies to its own comparable confidential information, but in no event less than reasonable measures.

Each party's confidentiality obligations will not apply to information: (i) already known to it at the time of disclosure; (ii) in the public domain or publicly available; (iii) provided to it by a third party who is under no such obligation of confidentiality; or (iv) independently developed by it. Each party may disclose

confidential information to its legal advisers to protect its own legitimate interests or to comply with any legal or regulatory requirements. If any court, regulatory authority, professional body or legal process requires the recipient to disclose information covered by this confidentiality obligation, then the recipient may make any such disclosure; provided that the recipient will, if permitted by law, advise the other party promptly of any such requirement and cooperate, at such other party's expense, in responding to it.

Irrespective of where we receive or hold individually identifiable personal information ("personal data") on your behalf, we confirm that, acting as data processor we will take appropriate technical, physical and organisational/administrative measures to protect that personal data against accidental or unlawful destruction or accidental loss or unauthorised alteration, disclosure or access. We will only use that personal data for the purposes of providing services to you or for other reasonable purposes which are related to the services we provide, unless you instruct us otherwise. You and Integrated Marketing Solutions Ltd shall each comply with the provisions and obligations imposed on each of us by applicable data privacy legislation and regulations.

## 7. Limitation of Liability.

(i) If our services do not conform to the requirements agreed between the parties please notify us promptly and we shall re-perform any non-conforming services at no additional charge or, at our option, refund the portion of the fees paid with respect to such services.

(ii) The re-performance of the services or refund of the applicable fees is intended to provide an adequate remedy for any failure on our part to adhere to the requirements agreed between the parties for the performance of our services or otherwise under a statement of work. Whether or not such re-performance or refund would provide an adequate remedy for any loss or damage suffered by you or any third party, the aggregate liability taken together of: (a) Integrated Marketing Solutions Ltd; and (b) its employees, directors, officers, agents and subcontractors ("related persons"); arising from or in any way connected with each statement of work or the services provided under that statement of work, whether in contract, tort (including, without limitation negligence and misrepresentation), or for breach of statutory duty or otherwise (all of these being what we call "theories of law"), shall not exceed in aggregate £2,000,000 (two million pounds sterling) unless another amount has been agreed in the applicable statement of work.

(iii) Subject to clause 7(iv), in no event shall Integrated Marketing Solutions Ltd and/or any of the related persons be liable under any theories of law under or in connection with, or arising out of, these terms or any statement of work or any services, for any: (a) loss of income; (b) loss of actual or anticipated profits; (c) loss of business; (d) loss of revenue or the use of money; (e) loss of contracts; (f) loss of anticipated savings; or (g) any indirect or consequential loss; (all these categories being what we call "special losses"). This exclusion of liability for special losses applies whether any of them are foreseeable, known, foreseen or otherwise contemplated, unless otherwise agreed in writing between the parties. Also, the particular special losses in that list (a) to (f) inclusive apply whether such special losses are direct, indirect, consequential or otherwise.

(iv) In the rare circumstances where the only damage that can be suffered under any statement of work or any services is special losses, then clause 7(iii) shall not have effect but, in that case, the limitation in clause 7(ii) shall apply to such special losses.

(v) Without limiting anything else in this clause 7, where we and/or any related persons are jointly liable to you with another party under or in any way connected with these terms or any statement of work or any services hereunder, we and our related persons shall, to the extent permitted by law, only be liable to you for those losses that correspond directly with our (and/or our related persons') proportionate share of responsibility for the losses in question, whether or not such other party is made a party to the same proceedings as us or any related proceedings and whether or not such party is able to and/or does satisfy any judgment against it.

(vi) Nothing in these terms or any statement of work shall exclude or limit the liability of Integrated Marketing Solutions Ltd and/or the related persons: (a) for death or personal injury resulting from our and/or the related persons' negligence; (b) for fraud; or (c) to the extent that the law does not permit the same to be excluded or limited.

## 8. Third Parties. For the avoidance of doubt, clause 7 confers rights on the related persons which may be enforced by any of them. Otherwise, no person who is not a party to these terms or any statement of work shall have the right to enforce any of these terms.

We accept no responsibility for any consequences arising from any third party relying on our work product. If we agree to provide our work product to a third party, you are responsible for ensuring that the third party is made aware of the fact that they are not entitled to rely upon it.

You agree to reimburse us for all costs (including reasonable legal fees) that we incur in responding to any requests or demands from third parties, pursuant to legal process or otherwise, for data or information related to the services provided to you.

9. **Termination.** Either party may terminate a project on 30 days' written notice to the other party. We shall be entitled to be paid for services rendered up to the date of any such termination, and for expenses incurred. Any provision of these terms or any statement of work that would be reasonably intended to apply after termination will do so.
10. **Miscellaneous.** In respect of each project, these terms, together with the applicable statement of work, set out the complete and exclusive statement of agreement and understanding between you and us, which supersedes and excludes all prior or contemporaneous proposals, understandings, agreements or representations, whether oral or written, with respect to the subject matter of the statement of work in question. Any modifications of or amendments to these terms or a statement of work or a change to the services must be in writing and agreed by the parties. Should any provisions of these terms or any provisions in a statement of work be declared void, illegal or otherwise unenforceable, the remainder shall survive unaffected.

Neither party may assign or delegate any of its rights or obligations to any third party without the prior written consent of the other party. Notwithstanding the foregoing either party may assign or delegate any of its rights and obligations to an affiliate. We reserve the right to employ subcontractors to assist us in providing services and to pass to them any information and materials they need to perform their work. Where we use affiliates or subcontractors to provide the services to you, we will (a) notify you prior to the commencement of their work and (b) remain responsible for the provision of the services to you.

Neither we (and/or our related persons) nor you shall have any liability in respect of any statement (except in the case of fraud where the liability of each party to the other shall be unlimited) made by either party or on its behalf to the other party which is not contained in these terms or the applicable statement of work and each party agrees that neither has entered into these terms, or will enter into a statement of work, in reliance on any representation by the other not contained in these terms or the applicable statement of work.

11. **Dispute Resolution and Governing Law.** Integrated Marketing Solutions Ltd and you agree to work in good faith to resolve any disputes arising out of or in connection with these terms or any statement of work. If a dispute cannot be resolved it shall be submitted to non-binding mediation in accordance with the Centre for Effective Dispute Resolution's model mediation procedure then in force before either party pursues other remedies hereunder. The arrangements between us (and all non-contractual relationships arising out of or related to them) shall be governed by and subject to English law and, subject to the dispute resolution provisions set out above, each party hereby irrevocably submits to the exclusive jurisdiction of the English courts.

Signed by and on behalf of:  
**INTEGRATED MARKETING SOLUTIONS LTD**

By: \_\_\_\_\_

Print Name:\_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

Accepted and agreed on behalf of:  
**Client XXX**

By: \_\_\_\_\_

Print Name:\_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_